

Rule 12.380. Failure to Make Discovery; Sanctions

(a) Motion for Order Compelling Discovery. On reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending or in accordance with rule 12.310(d). An application for an order to a deponent who is not a party must be made to the circuit court where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under rule 12.310 or 12.320, or a corporation or other entity fails to make a designation under rule 12.310(b)(6) or 12.320(a), or a party fails to answer an interrogatory submitted under rule 12.340, or if a party in response to a request for inspection submitted under rule 12.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party in response to a request for examination of a person submitted under rule 12.360(a) objects to the examination, fails to respond that the examination will be permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination, or if any person fails to comply with any discovery request or requirement under the Florida Family Law Rules of Procedure, including, but not limited to, the failure to comply with rule 12.285, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made under rule 12.280(d).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer shall be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted and after opportunity for hearing, the court must require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys' fees, unless the court finds that the

movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust. If the motion is denied and after opportunity for hearing, the court must require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred as a result of making the motion among the parties and persons.

(b) Failure to Comply with Order.

(1) If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court.

(2) If a party or an officer, director, or managing agent of a party or a person designated under rule 12.310(b)(6) or 12.320(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or rule 12.360, the court in which the action is pending may make any of the following orders:

(A) An order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.

(D) Instead of any of the foregoing orders or in addition to them, an order treating as a contempt of court the failure to obey any orders except an order to submit to an examination made under rule 12.360(a)(1)(B) or subdivision (a)(2) of this rule.

(E) When a party has failed to comply with an order under rule 12.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in subdivisions (b)(2)(A)–(b)(2)(C), unless the party failing to comply shows the inability to produce the person for examination.

Instead of any of the foregoing orders or in addition to them, the court must require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may

include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Alternatively, the court may defer ruling on the party's motion for sanctions until the conclusion of the matter in controversy.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 12.370 and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees. The court may issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that

- (1) the request was held objectionable under rule 12.370(a)(3),
- (2) the admission sought was of no substantial importance, or
- (3) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under rule 12.310(b)(6) or 12.320(a) to testify on behalf of a party fails

- (1) to appear before the officer who is to take the deposition after being served with a proper notice,
- (2) to serve answers or objections to interrogatories submitted under rule 12.340 after proper service of the interrogatories, or
- (3) to serve a written response to a request for inspection submitted under rule 12.350 after proper service of the request, the court in which the action is pending may take any action authorized under subdivisions (b)(2)(A)-(b)(2)(C) of this rule.

Any motion specifying a failure under subdivisions (d)(2) or (d)(3) must include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. Instead of any order or in addition to it, the court may require the party failing to act to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the

ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 12.280(d).

(e) Electronically Stored Information; Sanctions for Failure to Preserve. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.